

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIE LEE BROOKS, II,
Plaintiff,
v.
DANIEL CASSIE, *et al.*,
Defendants.

Case No. 2:23-cv-00294-KJM-JDP (PC)

ORDER

GRANTING DEFENDANT'S MOTION TO
COMPEL DEPOSITION AND TO MODIFY
THE SCHEDULING ORDER AND
DENYING PLAINTIFF'S MOTION TO
QUASH DEPOSITION

ECF Nos. 39 & 40

FINDINGS AND RECOMMENDATIONS

THAT PLAINTIFF'S MOTION TO STRIKE
AFFIRMATIVE DEFENSES BE DENIED

ECF No. 35

OBJECTIONS DUE IN FOURTEEN DAYS

Plaintiff, a state prisoner proceeding *pro se*, brings this case alleging that he was sexually assaulted during a medical examination. Pending are plaintiff's motion to strike two affirmative defenses, ECF No. 35, plaintiff's motion to quash or stay his deposition, ECF No. 39, and defendant's motion to compel plaintiff's deposition and to modify the scheduling order, ECF No.

40. I recommend that plaintiff's motion to strike be denied. I order that plaintiff's motion to quash or stay his deposition is denied, and defendant's motion is granted.

Motion to Strike Affirmative Defenses

The motion at bar, ECF No. 35, is plaintiff's second motion to strike affirmative defenses. I recommended that his first, ECF No. 25, be granted in part, ECF No. 33, and those recommendations are currently before the district judge. His current motion seeks to strike the two defenses I recommended upholding in my previous findings and recommendations. Nothing in this motion gives me cause to reconsider those earlier findings, and I recommend that this motion be denied for the same reasons described in the previous recommendations.

Motion to Quash or, in the Alternative, Stay Deposition for Sixty Days

Plaintiff moves to quash, or, alternatively, to stay his deposition because, in April 2024, he underwent back surgery. ECF No. 39 at 2. It is now September, and, in his motion, plaintiff indicated that a sixty-day stay of the deposition would be appropriate to allow for physical recovery. *Id.* at 2-3. Given that more than sixty days have passed, I will deny plaintiff's motion to quash or stay the deposition.

Motion to Compel and to Modify Scheduling Order

Defendants seek to compel plaintiff to sit for a deposition. ECF No. 40-1 at 4. Defendants state that plaintiff missed his previously noticed deposition and that plaintiff has not shown any basis for a protective order prohibiting such a deposition or limiting its scope. *Id.* at 2-3. I agree. In his opposition, plaintiff argues that requiring him to sit for a deposition will force him to relive the trauma of the alleged incident. ECF No. 41 at 3-4. I am not unsympathetic to the mental strain plaintiff may endure in having to discuss the incident, but he has put that event at issue by bringing this suit; defendants must be allowed to defend themselves. I will grant defendants' motion.

Accordingly, it is ORDERED that:

1. Plaintiff's motion to quash or, in the alternative, stay deposition, ECF No. 39, is DENIED.
2. Defendants' motion to compel and modify the scheduling order, ECF No. 40, is

1 GRANTED. Defendants shall take plaintiff's deposition within sixty days of this order's entry.
2 Any pre-trial motions are due within ninety days of this order's entry.

3 Further, it is RECOMMENDED that plaintiff's motion to strike affirmative defenses, ECF
4 No. 35, be DENIED.

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days of
7 service of these findings and recommendations, any party may file written objections with the
8 court and serve a copy on all parties. Any such document should be captioned "Objections to
9 Magistrate Judge's Findings and Recommendations," and any response shall be served and filed
10 within fourteen days of service of the objections. The parties are advised that failure to file
11 objections within the specified time may waive the right to appeal the District Court's order. *See*
12 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.
13 1991).

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15 IT IS SO ORDERED.

16 Dated: September 9, 2024

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18 JEREMY D. PETERSON
19 UNITED STATES MAGISTRATE JUDGE
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